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FEB 17 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

A. THOMAS S.,	)	2 CA-JV 2010-0105
	)	DEPARTMENT B
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
AMANDA S. and JULIAN S.,	)	Appellate Procedure
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100SV201000007

Honorable Joseph R. Georgini, Judge

AFFIRMED

A. Thomas S. — Casa Grande
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 After a contested severance hearing in August 2010, the juvenile court terminated the parental rights of Thomas S. to his son, Julian S., born in November 2001, granting the petition filed in February 2010 by Julian's mother, Amanda. The court terminated Thomas's rights on the grounds of abandonment, neglect or willful abuse, and unfitness to parent. *See* A.R.S. § 8-533(B)(1), (2), (4). The court found termination of Thomas's parental rights was in Julian's best interests. On appeal, Thomas contends there was insufficient evidence to support the court's termination based on abandonment and unfitness to parent. He also challenges the court's finding that termination was in Julian's best interests and its waiver of a social study. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). When Amanda filed the petition to terminate Thomas's parental rights in February 2010, Thomas had been convicted of five offenses involving various forms of

sexual deviancy, including voyeurism,[1] and two counts of attempted sexual exploitation of a minor, dangerous crimes against children. Thomas's most recent offenses involved three young girls who lived near the family. Thomas placed a video camera in Julian's bedroom and filmed a young girl, apparently one of Julian's friends, while she was changing her clothes. According to the author of a polygraph report which was admitted as an exhibit at the severance hearing, Thomas "secretly videotaped a 10 YOA girl changing clothes, and edited the video, so that it showed her buttocks." When Amanda filed the petition to terminate, Thomas had been placed on lifetime probation and had been ordered to register as a sex offender, which prohibited him from having any contact with minors under the age of eighteen. In addition, pursuant to the custody order, Thomas was not permitted to have contact with Julian.

¶4 Amanda and Thomas represented themselves at the contested severance hearing, held in August 2010.[2] Thomas submitted two exhibits at the hearing, a report of his April 2010 polygraph examination, and an Abel Screen Assessment and Questionnaire, a report detailing a January 2010 evaluation of Thomas prepared by a

[1]The author of the polygraph report Thomas submitted as an exhibit at the severance hearing stated that Thomas had "estimated that he [had] engaged in window peeping on hundreds of occasions."

[2]In his recitation of the facts, Thomas notes that in June 2010 the juvenile court denied his request to provide an attorney to represent him at the severance hearing. The record contains no formal determination of indigency or any explanation why the court denied his request for an attorney. *See* A.R.S. § 8-221(B) (in a termination proceeding, the juvenile court "shall" appoint an attorney to represent a parent who is "found to be indigent and entitled to counsel"). In any event, at the severance hearing, Thomas did not challenge the court's denial of his earlier request for an attorney, nor has he raised this as an issue on appeal.

counselor who specializes in the area of the assessment and treatment of sexual abusers. The author of the Abel report identified the following as "problem areas which may need attention:"

> 1) as noted above [Thomas] is disclosing of having engaged in deviant sexual behavior but it was found that:
>
> a. he only partially acknowledges having had thoughts about engaging in peeping and looking for ways to peep;
> b. he has been in treatment for having been in possession of child pornography but does not report ever having sought or obtained child pornography;
> c. he is not aware of the planning and scheming that went into committing his offense behavior (peeping);
> d. he does not recognize the feelings of excitement he got as he was anticipating committing his offense behavior (peeping);
>
> 2) he still minimizes his past sex obsession;
> 3) he says he has been accused of a sex offense against a child but does not report ever having had sexual interests, thoughts or desires involving a child or having sought out or manipulated a child with the intent to engage them in sexual activity;
> 4) he still uses justifications and excuses to keep from accepting full accountability for his sexually irresponsible behaviors, i.e., in the matter of accountability for his behavior, he attempts to explain away his behavior by indicating it happened because of his family problems, he did not have a satisfying sexual relationship and was stressed.

¶5 Thomas presented two witnesses at the severance hearing, licensed counselor Jodi Livermon, and probation officer Donnie Hill. Livermon testified that, out of all of the individuals who previously had completed the Helping Associates Sex Offender Treatment Program, in which Thomas was participating, none had reoffended. Despite never having met Julian, Livermon opined that it was in Julian's best interests to have Thomas in his life, and that severance of Thomas's parental rights was premature.

Hill explained that an acquaintance of Thomas had been selected to go through a six-month-to-one-year training process to act as his chaperone during visits with Julian. Although Hill advised against severance, he acknowledged that the nature of Thomas's offenses proved him "more unfit," rather than fit, to parent a child. Hill also acknowledged that, although he previously had opined Thomas is a "threat to society" and should be monitored, he now believed Thomas should be permitted to visit Julian. In addition, Hill acknowledged to the juvenile court that his opinions were based solely on Thomas's perspective, and that he had no idea how Thomas's offenses may have affected Julian.

¶6 Amanda testified that Thomas had not seen Julian for "[a]t least two and a half years," that he had not provided any child support since his 2007 arrest, even during a brief period when he had been employed, and that the last gift he had sent to Julian was "two Christmases ago." Amanda explained that Julian is angry about Thomas's convictions, and he understands that they involved "something inappropriate that has to do with other children." She testified that another child at school had told Julian his "father looks at little girls on the computer and they are naked . . . [a]nd that's not right," after which Julian "burst out into tears." Amanda also testified that Thomas's monthly letters to Julian, sent after the severance petition had been filed, which the juvenile court noted it had read, contained promises of reunification, despite court orders prohibiting such promises. Amanda stated that upon receiving Thomas's letters, Julian would express "anger or a little irritability and a lot of not understanding how an adult could do something to harm a little child or something inappropriate . . . to a child."

¶7 After noting it had taken judicial notice of the criminal and domestic relations files, the juvenile court terminated Thomas's parental rights based on abandonment, neglect or willful abuse, and unfitness to parent. *See* A.R.S. § 8-533(B)(1), (2), (4). The court noted Thomas's extensive history of deviant sexual behavior; that he is a three-time convicted felon with two convictions for dangerous offenses against children, is on lifetime probation, and is a registered sex offender; that he has not provided support for Julian in three years, despite having had an opportunity to do so for two months; and that Thomas had willfully abused Julian, causing him serious emotional harm.

¶8 Thomas seems to suggest this court should reweigh the evidence. For example, he asserts the juvenile court improperly "allowed statements to be [admitted] that were contradicted by the evidence presented, and considered those statements as fact," and that "the court considered [Julian's guardian ad litem's] testimony despite the fact that it contradicted the evidence and expert testimony." But it is for the juvenile court, as the trier of fact, to weigh the evidence after determining the credibility and persuasiveness of the witnesses. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004). In a somewhat related argument, Thomas asserts that the court "overstepped its role as an impartial party" by questioning the witnesses. Although the court did ask questions to clarify the witnesses' testimony, the record simply does not support Thomas's assertion that the court's conduct prejudiced him in any way.

¶9 Thomas appears to challenge the juvenile court's termination order based only on the grounds of fitness to parent and abandonment, but not on the ground of neglect or willful abuse. Because we need only find that one statutory ground was established in order to sustain the court's order, we do not address Thomas's arguments regarding the sufficiency of the evidence to support the grounds of fitness to parent or abandonment. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000). And there is reasonable evidence in the record that supports the court's factual findings that Thomas neglectfully or willfully abused Julian. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. When the court asked Thomas if he thought his actions had caused Julian emotional injury, Thomas responded, "Of course, I do." There is abundant evidence in the record, as noted above, to support the court's finding that Julian was "seriously emotionally abused as a result of [Thomas's] convictions and . . . acts," and that Julian "will have to come to grips with the fact that he participated unknowingly in these offenses."

¶10 Thomas also argues the evidence was insufficient to support the juvenile court's finding that termination was in Julian's best interests. "A best-interests determination need only be supported by a preponderance of the evidence." *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). "Evidence that a child will derive 'an affirmative benefit from termination' is sufficient to satisfy that burden . . . ." *Id., quoting Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945. There was ample evidence to support the court's best-interests finding. The court noted that "[t]his proceeding has been quite frankly all about [Thomas's] rehabilitation" and the

uncertainty of how long that process will take, rather than Julian's need for permanency. The court found that Julian deserves permanency and stability in order to move forward without the fear that Thomas will continue to "press and press and press and press" for more contact with him, which the court found to be "a detriment" to the child. Delana Fuller, Julian's guardian ad litem, similarly pointed out that contact with Thomas would only prolong Julian's exposure to the difficult events in his past.

¶11 Finally, Thomas argues the juvenile court erred by waiving the completion of a family social study. *See* A.R.S. § 8-536(A) (upon filing of petition to terminate parental rights, court shall order that a social study be conducted). However, § 8-536(C) permits the court to waive the social study requirement if it finds "that to do so is in the best interest of the child." In June 2010, the court noted it was waiving the study because it had appointed attorney Fuller as Julian's guardian ad litem. In addition, at the beginning of the termination hearing, the court explained it previously had "found there was no need for a social study in this case . . . pursuant to Title VIII." Even though the court did not expressly find that waiving the social study was in Julian's best interest, we can infer it did so in compliance with the statute. The court appointed Fuller to evaluate and protect Julian's interests, and noted it had waived the social study pursuant to Title VIII. Moreover, Thomas did not object to waiving the study, either when the court first announced its decision, or later, at the severance hearing. As such, he has waived this argument on appeal. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007).

¶12 For all of these reasons, we affirm the juvenile court's termination of Thomas's parental rights to Julian.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge